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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/753,280	01/09/2004	John P. Hely	12,575	6585

7590 01/10/2007
Mr. William W. Haefliger
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EXAMINER

PATEL, TARLA R

ART UNIT PAPER NUMBER

3772

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/10/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/753,280

Applicant(s)

HELY, JOHN P.

Examiner

Tarla R. Patel

Art Unit

3772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/9/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3,5-9 and 11-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Ritchie (6,447,469).

Ritchie discloses an ankle support or a self tightening ankle brace (10) having strap structure including first (34) and second (14) elongated strap portions and through slit opening (24), wherein first portion adapted to wrapped about an ankle and second portion adapted to extend through the slit, then downwardly at one side of the ankle, then underfoot and then upwardly at the opposite side of the ankle for operative attachment and first section (see fig 3).

With respect to claim 2, the ankle support brace of Ritchie forms a unitary strap incorporating first and second sections (see fig 2).

With respect to claim 3, Ritchie discloses an ankle support wherein second portion is folded relative to the first portion, proximate the slit (see fig 3).

With respect to claim 5, Ritchie discloses an ankle support with stiffener or ring means at the slit (column 2 line 62).

With respect to claim 6, Ritchie discloses an ankle support including an adjustable hook (15) and loop (16) or pile connection (column 2 lines 61-62).

With respect to claims 7-9 and 11-12, the method of establishing the brace in an operative condition, Ritchie teaches all of the structural elements of the brace and its use is inherent when applying the ankle support of Ritchie to an ankle. The method would inherently include operatively attaching the strap second portion to the strap first portion via hook and loop or pin elements to tighten the strap second portion under foot, second strap portion to self adjusting slide in slit in response to ankle flexing, assisting tightening of the strap structure (10) and Ritchie also inherently discloses folding the strap structure to cause the strap second portion to extend downwardly through the slit.

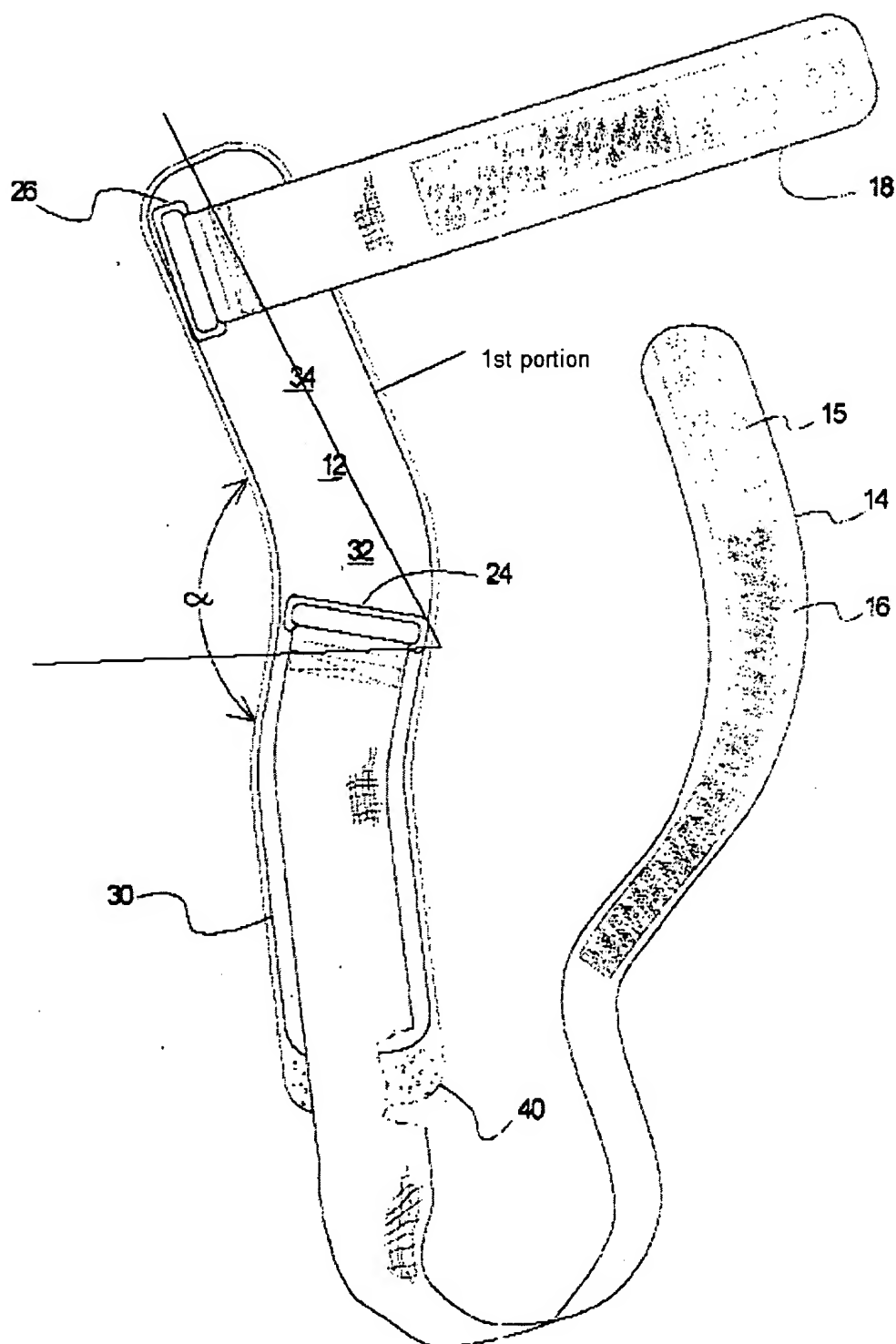
Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 4 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ritchie (469).

Ritchie substantially discloses the invention, see rejection to claims 1-3,5-9 and 11-12 above; however, Ritchie does not specifically disclose the brace having a slit at an angle α relative to the first portion direction of elongation where the angle α is from 40° to 50°. Ritchie does disclose a slit extending at an angle α relative to the strap first portion direction of elongation (please see figure below). That can be interpreted to be a slit angled 40° to 50° relative to the strap. At the time of the invention, it would have been obvious to make the splint specifically angled within the 40° to 50° range to have nice folding at slit proximate to better and comfortable fit of brace or support to user's ankle.



Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tarla R. Patel whose telephone number is 571-272-3143. The examiner can normally be reached on M-F 6-3.30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TP

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11/5/07